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SUBJECT: Correcting judicial wrongs: welcome steps

1. (U) Summary. A new Vietnamese National Assembly resolution enables victims of judicial and police injustice to seek financial compensation from the responsible government agencies and even individual official(s). The resolution holds officials personally responsible for misadministration of justice in order to redress past injustices, as well as to deter future abuses. Experts nonetheless have criticized the resolution for not moving to an "adversarial process" with built-in checks on abuse. Implementing regulations apparently do not yet exist, meaning it will likely be a long time before put in use, but the resolution marks a welcome recognition of systemic flaws. The monthly Cabinet meeting in July paid special attention to this issue, urging all levels to do a better job at resolving such issues. End Summary.

Crime and (Wrongful) Punishment

2. (U) The National Assembly Standing Committee (NASC) issued resolution #388/2003 on March 17, 2003, designed to ensure redress and in many cases compensation for people wrongly imprisoned, fined, or punished by the State. Legal experts are still debating whether the resolution elaborates on existing laws or supersedes them. Moreover, as the resolution has yet to be published in the Official Gazette, it is unclear whether this resolution has full legal validity yet, although its contents have been published in the Communist Party-run "Nhan Dan" newspaper. The resolution cites rights and procedures embodied in the Vietnamese Constitution, the Criminal Code, and Article 624 (introduced in 1994) of the Civil Code that already authorize the recovery of the legitimate interests of those wronged during criminal proceedings, as well as underlining the responsibility of the actors in those proceedings. The resolution's twenty-one articles include definitions, levels of and responsibility for compensation, as well as funding and enforcement provisions.

Who and what is covered

3. (U) Four types of cases are eligible for compensation: (a) people held in temporary custody, when decisions are later annulled on the basis that those persons did not indeed violate the law, (b) people held in temporary detention, when decisions are later annulled on the basis that those persons did not conduct crimes, (c) people who have served or are serving terms of imprisonment, life imprisonment, or subject to capital punishment, who are later "certified innocent" by decisions or rulings of competent courts, and (d) people against whom formal investigations, prosecutions, and trials are conducted, who are later "certified innocent" by decisions/court rulings of competent proceeding offices. As an example, a type (d) case might involve a person against whom charges are brought, then dismissed, who has suffered personal indignity and later receives a declaration of innocence.

4. (U) Relatives of deceased victims of injustice, including wives, husbands, parents, foster-parents, children, adopted children, and persons who directly took care of the victims financially shall be entitled to compensation equal to 360 months' salary, using the minimum salary standards set by the State at the time the payment is considered. It is unclear whether all derivatives have separate or collective claims to compensation; if the former, the order of priority among derivative claimants is not addressed.

5. (U) The resolution authorizes compensation for expenses related to health problems sustained as a result of imprisonment, including lost income for individuals taking care of people wrongly accused. It also calls for all real property of wrongly accused individuals that was seized, disappeared, damaged, or destroyed be fairly compensated, along with the return of all financial assets expropriated. Lost "stable" income due to wrongful imprisonment is also to be repaid.

How to qualify

16. (U) Petitioners seeking redress for injustice must file applications with the People's Court at the District level in the district of their current residence. Applications must be made within 30 days of a higher court's determination of injustice or of an announcement of innocence by a competent body. Application fees do not exist and any recovery from responsible officials is non-taxable.

17. (U) Beginning with the entry into effect of this resolution, individuals will have a statute of limitations of two years to claim compensation from the time their cases have been declared wrongful. Agencies are supposed to hold discussions with the individual within 30 days from receipt of the claim. Within seven days from when an agreement on compensation is reached between the individual and the agency, the agency needs to issue the decision on compensation. The individual is supposed to receive the actual repayment of expenses within 10 days from issuance of such decision, or from issuance of court rulings about the repayment. (Note: The individual is entitled to bring the case to court if the agency fails to do such within the mentioned time frames. Courts will consider claims for repayment according to procedures provided for in the Civil Procedures Code. End Note) The State budget is supposed to have ultimate responsibility for coming up with adequate funds, under the management of the Ministry of Finance. The resolution specifies, however, that it covers only wrongful cases stemming from July 1, 1996 until the present, although it appears to leave the window open for compensation even in some earlier cases.

18. (SBU) The estimated impact on Vietnam's national budget has not been calculated, according to Vietnam Lawyers Association (VLA) Vice General Secretary Chu Hong Thanh. Thanh noted that in 2002 People's Courts reversed unjust decisions in 58 cases, although it is not clear whether compensation will be/is involved. Thanh added that individuals who believe they or relatives have been wrongly punished may choose whether or not to hire lawyers, but predicted that, in "serious cases involving high sentences," the state may opt to assign a lawyer to represent the victim. (Comment: This seems both unlikely -- the State deliberately trying to overturn itself for serious cases -- and potentially unhelpful -- to have a State-run attorney on behalf of the victim. End comment)

Some Criticisms -----

19. (SBU) Vietnam National University Faculty of Law Professor Ngo Huy Cuong nonetheless called Resolution 388/2003 "a step backward" for Vietnamese justice. In a conversation with poloffs, Cuong argued that, despite the law's admirable intentions, it is "an incomplete, situational measure" that fails to move Vietnam's legal system toward an adversarial system, where sides vie with contending legal and factual arguments, which would best protect defendant's rights and put checks and balances into place. Specifically, Cuong faulted the legislation for leaving in place prosecutorial-dominated system, wherein both the prosecution (or "procuracy") and court operate on behalf of the state, with little to no involvement or discussion from defense counsel. (Note: The legislation, however, does single out the Prosecutor's office for responsibility for compensation in cases where it approved or sought legal punishments. End note.)

110. (U) Additionally, Cuong said that the legislation's new effort to assign liability will create a chilling effect on individual actors within the criminal justice system, creating less confident officials who will be less intent on obtaining justice and more intent on protecting their records and backsides. Even where the system works as designed, difficulty remains in apportioning liability. As an example, local courts often comprise a judge and two lay assessors who decide on majority basis. Where a decision is split two to one, under this new resolution, all three members could be held accountable for compensation to a wrongly convicted defendant.

111. (U) Vietnam National University's Faculty of Law Professor Bui Thi Thanh Hang contended separately, however, that the National Assembly's resolution has even lesser legal validity than Civil Code (specifically Article 624). Hang claimed that the resolution aims at spelling out redress for wrongs in the criminal system, but does not supersede Article 624, which also provides for misapplications in administrative and other legal systems. Ms. Hang also pointed out that redressing wrongs in the legal system should not be limited to criminal matters. Administrative and labor injustices can impose financial hardship on victims as severe as criminal cases and deserve similar compensation.

High Level Attention

112. (U) The monthly Government Cabinet meeting July 30-31 heard a report on petitions for redress of injustice and related issues covering the first six months of 2003. The Cabinet resolution, which appeared in the 8/6 "Nhan Dan" and other major newspapers, admitted a "complicated evolution" of this problem. The Cabinet requested all ministries, offices, and localities to do a better job in addressing these concerns, especially at the village and district level.

113. (U) Separately, the National Assembly Standing Committee in its most recent session also debated -- heatedly, according even to the Vietnamese media -- the possibility of individuals recovering family properties taken during various land reform campaign in the 1950s and 1960s. Apparently, delegates decided that this can of worm should remain closed.
Comment

114. (U) That Vietnam is taking at least formal steps to assist victims of injustice -- to the extent of theoretically making the State literally pay for its mistakes -- is welcome. At the same time, it is a tacit admission of the systemic failings of its past and existing judicial processes. Embassy would be surprised to see a flood of cases successfully seeking restitution, but at least that option is more possible now.
PORTER